

AMENDED IN SENATE JULY 16, 2015

AMENDED IN SENATE JUNE 23, 2015

AMENDED IN ASSEMBLY JUNE 2, 2015

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1178

Introduced by Assembly Member Achadjian

February 27, 2015

An act to amend Section 11713.3 of the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1178, as amended, Achadjian. Vehicles: manufacturers and distributors.

Existing law generally requires a manufacturer, distributor, transporter, or dealer of vehicles to be licensed by the Department of Motor Vehicles. Under existing law, it is unlawful for a manufacturer, manufacturer branch, distributor, or distributor branch to engage in specified practices, including taking or threatening to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition, unless the export or sale-for-resale prohibition policy was provided to the dealer in writing prior to the sale or lease, and the dealer knew or reasonably should have known of the customer's intent to export or resell the vehicle in violation of the prohibition at the time of sale or lease. Existing law further provides

that if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state, a rebuttable presumption is established that the dealer did not have reason to know of the customer's intent to export or resell the vehicle. A violation of these provisions is a crime.

This bill would recast the provisions relating to export and sale-for-resale prohibitions described above to provide that it would be unlawful to take or threaten to take any adverse action against a dealer pursuant to an export or sale-for-resale prohibition because the dealer sold or leased a vehicle to a customer who either exported the vehicle to a foreign country or resold the vehicle in violation of the prohibition if the dealer causes the vehicle to be registered in this or any other state, and collects or causes to be collected any applicable sales or use tax due to this state. By expanding the scope of an existing crime, this bill would impose a state-mandated local program. The bill would also provide that a manufacturer, manufacturer branch, distributor, or distributor branch may take an adverse action against a dealer only when a vehicle is either exported to a foreign county or resold in violation of an export or sale-for-resale prohibition policy if the manufacturer, manufacturer branch, distributor, or distributor branch provided the policy and a known exporter list in writing to the dealer at least 48 hours before the sale or lease of the vehicle and the dealer sold or leased the vehicle to a person listed as a known ~~exporter~~. *exporter or the dealer had actual knowledge of the customer's intent to export the vehicle to a foreign country at the time of the sale or lease, and would, in any proceeding in which a challenge to an adverse action is at issue, require the burden of proof to be on the manufacturer, manufacturer branch, distributor, or distributor branch.* This bill would make additional technical, nonsubstantive changes to those provisions and make related findings and declarations.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The distribution, sale, and service of new motor vehicles in
4 the State of California vitally affects the general economy of this
5 state and the public welfare.

6 (b) The new motor vehicle franchise system, which operates
7 within a strictly defined and highly regulated statutory scheme,
8 assures the consuming public of a well-organized distribution
9 system for the availability and sale of new motor vehicles
10 throughout the state, provides a network of quality warranty, recall,
11 and repair facilities to maintain those vehicles, and creates a
12 cost-effective method for the state to police those systems through
13 the licensing and regulation of private sector franchisors and
14 franchisees.

15 (c) Franchisors sometimes establish strict export policies when
16 a paid sales incentive is subject to being charged back or new
17 vehicle allocation is reduced when a vehicle is exported or resold,
18 even when the dealership did not know, or in the exercise of
19 reasonable diligence should not have known, of the intended
20 exportation or resale. In response, California franchise laws were
21 recently updated to prohibit chargebacks and other adverse actions
22 in circumstances in which the dealer did not have knowledge of,
23 or reason to know of, the intended exportation or resale.

24 (d) Despite California's franchise law acknowledging that the
25 dealer did not have knowledge or reason to know that a vehicle
26 would be exported or resold, at least one manufacturer is
27 disregarding this franchise law by imposing a strict liability export
28 and sale-for-resale policy against dealers. These actions impose
29 severe sanctions on dealers regardless of the fact that dealers are
30 collecting sales tax and registering these vehicles in California and
31 have no reasonable knowledge of the future fate of those vehicles.

32 (e) It is the intent of this act to ensure that new motor vehicle
33 dealers are treated fairly by their franchisors, to prohibit franchisors
34 from avoiding state franchise laws, and to ensure that dealers are
35 not subject to adverse action when the dealer did not know or have
36 reason to know vehicles are exported or resold.

37 SEC. 2. Section 11713.3 of the Vehicle Code is amended to
38 read:

1 11713.3. It is unlawful and a violation of this code for a
2 manufacturer, manufacturer branch, distributor, or distributor
3 branch licensed pursuant to this code to do, directly or indirectly
4 through an affiliate, any of the following:

5 (a) To refuse or fail to deliver in reasonable quantities and within
6 a reasonable time after receipt of an order from a dealer having a
7 franchise for the retail sale of a new vehicle sold or distributed by
8 the manufacturer or distributor, a new vehicle or parts or
9 accessories to new vehicles as are covered by the franchise, if the
10 vehicle, parts, or accessories are publicly advertised as being
11 available for delivery or actually being delivered. This subdivision
12 is not violated, however, if the failure is caused by acts or causes
13 beyond the control of the manufacturer, manufacturer branch,
14 distributor, or distributor branch.

15 (b) To prevent or require, or attempt to prevent or require, by
16 contract or otherwise, a change in the capital structure of a
17 dealership or the means by or through which the dealer finances
18 the operation of the dealership, if the dealer at all times meets
19 reasonable capital standards agreed to by the dealer and the
20 manufacturer or distributor, and if a change in capital structure
21 does not cause a change in the principal management or have the
22 effect of a sale of the franchise without the consent of the
23 manufacturer or distributor.

24 (c) To prevent or require, or attempt to prevent or require, a
25 dealer to change the executive management of a dealership, other
26 than the principal dealership operator or operators, if the franchise
27 was granted to the dealer in reliance upon the personal
28 qualifications of that person.

29 (d) (1) Except as provided in subdivision (t), to prevent or
30 require, or attempt to prevent or require, by contract or otherwise,
31 a dealer, or an officer, partner, or stockholder of a dealership, the
32 sale or transfer of a part of the interest of any of them to another
33 person. A dealer, officer, partner, or stockholder shall not, however,
34 have the right to sell, transfer, or assign the franchise, or a right
35 thereunder, without the consent of the manufacturer or distributor
36 except that the consent shall not be unreasonably withheld.

37 (2) (A) For the transferring franchisee to fail, prior to the sale,
38 transfer, or assignment of a franchisee or the sale, assignment, or
39 transfer of all, or substantially all, of the assets of the franchised
40 business or a controlling interest in the franchised business to

1 another person, to notify the manufacturer or distributor of the
2 franchisee's decision to sell, transfer, or assign the franchise. The
3 notice shall be in writing and shall include all of the following:

- 4 (i) The proposed transferee's name and address.
- 5 (ii) A copy of all of the agreements relating to the sale,
6 assignment, or transfer of the franchised business or its assets.
- 7 (iii) The proposed transferee's application for approval to
8 become the successor franchisee. The application shall include
9 forms and related information generally utilized by the
10 manufacturer or distributor in reviewing prospective franchisees,
11 if those forms are readily made available to existing franchisees.
12 As soon as practicable after receipt of the proposed transferee's
13 application, the manufacturer or distributor shall notify the
14 franchisee and the proposed transferee of information needed to
15 make the application complete.

16 (B) For the manufacturer or distributor, to fail, on or before 60
17 days after the receipt of all of the information required pursuant
18 to subparagraph (A), or as extended by a written agreement
19 between the manufacturer or distributor and the franchisee, to
20 notify the franchisee of the approval or the disapproval of the sale,
21 transfer, or assignment of the franchise. The notice shall be in
22 writing and shall be personally served or sent by certified mail,
23 return receipt requested, or by guaranteed overnight delivery
24 service that provides verification of delivery and shall be directed
25 to the franchisee. A proposed sale, assignment, or transfer shall
26 be deemed approved, unless disapproved by the franchisor in the
27 manner provided by this subdivision. If the proposed sale,
28 assignment, or transfer is disapproved, the franchisor shall include
29 in the notice of disapproval a statement setting forth the reasons
30 for the disapproval.

31 (3) In an action in which the manufacturer's or distributor's
32 withholding of consent under this subdivision or subdivision (e)
33 is an issue, whether the withholding of consent was unreasonable
34 is a question of fact requiring consideration of all the existing
35 circumstances.

36 (e) To prevent, or attempt to prevent, a dealer from receiving
37 fair and reasonable compensation for the value of the franchised
38 business. There shall not be a transfer or assignment of the dealer's
39 franchise without the consent of the manufacturer or distributor.
40 The manufacturer or distributor shall not unreasonably withhold

1 consent or condition consent upon the release, assignment,
2 novation, waiver, estoppel, or modification of a claim or defense
3 by the dealer.

4 (f) To obtain money, goods, services, or another benefit from
5 a person with whom the dealer does business, on account of, or in
6 relation to, the transaction between the dealer and that other person,
7 other than for compensation for services rendered, unless the
8 benefit is promptly accounted for, and transmitted to, the dealer.

9 (g) (1) Except as provided in paragraph (3), to obtain from a
10 dealer or enforce against a dealer an agreement, provision, release,
11 assignment, novation, waiver, or estoppel that does any of the
12 following:

13 (A) Modifies or disclaims a duty or obligation of a manufacturer,
14 manufacturer branch, distributor, distributor branch, or
15 representative, or a right or privilege of a dealer, pursuant to
16 Chapter 4 (commencing with Section 11700) of Division 5 or
17 Chapter 6 (commencing with Section 3000) of Division 2.

18 (B) Limits or constrains the right of a dealer to file, pursue, or
19 submit evidence in connection with a protest before the board.

20 (C) Requires a dealer to terminate a franchise.

21 (D) Requires a controversy between a manufacturer,
22 manufacturer branch, distributor, distributor branch, or
23 representative and a dealer to be referred to a person for a binding
24 determination. However, this subparagraph does not prohibit
25 arbitration before an independent arbitrator, provided that whenever
26 a motor vehicle franchise contract provides for the use of arbitration
27 to resolve a controversy arising out of, or relating to, that contract,
28 arbitration may be used to settle the controversy only if, after the
29 controversy arises, all parties to the controversy consent in writing
30 to use arbitration to settle the controversy. For the purpose of this
31 subparagraph, the terms “motor vehicle” and “motor vehicle
32 franchise contract” shall have the same meaning as defined in
33 Section 1226 of Title 15 of the United States Code. If arbitration
34 is elected to settle a dispute under a motor vehicle franchise
35 contract, the arbitrator shall provide the parties to the arbitration
36 with a written explanation of the factual and legal basis for the
37 award.

38 (2) An agreement, provision, release, assignment, novation,
39 waiver, or estoppel prohibited by this subdivision shall be
40 unenforceable and void.

1 (3) This subdivision does not do any of the following:

2 (A) Limit or restrict the terms upon which parties to a protest
3 before the board, civil action, or other proceeding can settle or
4 resolve, or stipulate to evidentiary or procedural matters during
5 the course of, a protest, civil action, or other proceeding.

6 (B) Affect the enforceability of any stipulated order or other
7 order entered by the board.

8 (C) Affect the enforceability of any provision in a contract if
9 the provision is not prohibited under this subdivision or any other
10 law.

11 (D) Affect the enforceability of a provision in any contract
12 entered into on or before December 31, 2011.

13 (E) Prohibit a dealer from waiving its right to file a protest
14 pursuant to Section 3065.1 if the waiver agreement is entered into
15 after a franchisor incentive program claim has been disapproved
16 by the franchisor and the waiver is voluntarily given as part of an
17 agreement to settle that claim.

18 (F) Prohibit a voluntary agreement supported by valuable
19 consideration, other than granting or renewing a franchise, that
20 does both of the following:

21 (i) Provides that a dealer establish or maintain exclusive
22 facilities, personnel, or display space or provides that a dealer
23 make a material alteration, expansion, or addition to a dealership
24 facility.

25 (ii) Contains no waiver or other provision prohibited by
26 subparagraph (A), (B), (C), or (D) of paragraph (1).

27 (G) Prohibit an agreement separate from the franchise agreement
28 that implements a dealer's election to terminate the franchise if
29 the agreement is conditioned only on a specified time for
30 termination or payment of consideration to the dealer.

31 (H) (i) Prohibit a voluntary waiver agreement, supported by
32 valuable consideration, other than the consideration of renewing
33 a franchise, to waive the right of a dealer to file a protest under
34 Section 3062 for the proposed establishment or relocation of a
35 specific proposed dealership, if the waiver agreement provides all
36 of the following:

37 (I) The approximate address at which the proposed dealership
38 will be located.

39 (II) The planning potential used to establish the proposed
40 dealership's facility, personnel, and capital requirements.

1 (III) An approximation of projected vehicle and parts sales, and
2 number of vehicles to be serviced at the proposed dealership.

3 (IV) Whether the franchisor or affiliate will hold an ownership
4 interest in the proposed dealership or real property of the proposed
5 dealership, and the approximate percentage of any franchisor or
6 affiliate ownership interest in the proposed dealership.

7 (V) The line-makes to be operated at the proposed dealership.

8 (VI) If known at the time the waiver agreement is executed, the
9 identity of the dealer who will operate the proposed dealership.

10 (VII) The date the waiver agreement is to expire, which may
11 not be more than 30 months after the date of execution of the
12 waiver agreement.

13 (ii) Notwithstanding the provisions of a waiver agreement
14 entered into pursuant to the provisions of this subparagraph, a
15 dealer may file a protest under Section 3062 if any of the
16 information provided pursuant to clause (i) has become materially
17 inaccurate since the waiver agreement was executed. Any
18 determination of the enforceability of a waiver agreement shall be
19 determined by the board and the franchisor shall have the burden
20 of proof.

21 (h) To increase prices of motor vehicles that the dealer had
22 ordered for private retail consumers prior to the dealer's receipt
23 of the written official price increase notification. A sales contract
24 signed by a private retail consumer is evidence of the order. In the
25 event of manufacturer price reductions, the amount of the reduction
26 received by a dealer shall be passed on to the private retail
27 consumer by the dealer if the retail price was negotiated on the
28 basis of the previous higher price to the dealer. Price reductions
29 apply to all vehicles in the dealer's inventory that were subject to
30 the price reduction. Price differences applicable to new model or
31 series motor vehicles at the time of the introduction of new models
32 or series shall not be considered a price increase or price decrease.
33 This subdivision does not apply to price changes caused by either
34 of the following:

35 (1) The addition to a motor vehicle of required or optional
36 equipment pursuant to state or federal law.

37 (2) Revaluation of the United States dollar in the case of a
38 foreign-make vehicle.

39 (i) To fail to pay to a dealer, within a reasonable time following
40 receipt of a valid claim by a dealer thereof, a payment agreed to

1 be made by the manufacturer or distributor to the dealer by reason
2 of the fact that a new vehicle of a prior year model is in the dealer's
3 inventory at the time of introduction of new model vehicles.

4 (j) To deny the widow, widower, or heirs designated by a
5 deceased owner of a dealership the opportunity to participate in
6 the ownership of the dealership or successor dealership under a
7 valid franchise for a reasonable time after the death of the owner.

8 (k) To offer refunds or other types of inducements to a person
9 for the purchase of new motor vehicles of a certain line-make to
10 be sold to the state or a political subdivision of the state without
11 making the same offer to all other dealers in the same line-make
12 within the relevant market area.

13 (l) To modify, replace, enter into, relocate, terminate, or refuse
14 to renew a franchise in violation of Article 4 (commencing with
15 Section 3060) of Chapter 6 of Division 2.

16 (m) To employ a person as a representative who has not been
17 licensed pursuant to Article 3 (commencing with Section 11900)
18 of Chapter 4 of Division 5.

19 (n) To deny a dealer the right of free association with another
20 dealer for a lawful purpose.

21 (o) (1) To compete with a dealer in the same line-make
22 operating under an agreement or franchise from a manufacturer
23 or distributor in the relevant market area.

24 (2) A manufacturer, branch, or distributor, or an entity that
25 controls or is controlled by a manufacturer, branch, or distributor,
26 shall not, however, be deemed to be competing in the following
27 limited circumstances:

28 (A) Owning or operating a dealership for a temporary period,
29 not to exceed one year at the location of a former dealership of the
30 same line-make that has been out of operation for less than six
31 months. However, after a showing of good cause by a
32 manufacturer, branch, or distributor that it needs additional time
33 to operate a dealership in preparation for sale to a successor
34 independent franchisee, the board may extend the time period.

35 (B) Owning an interest in a dealer as part of a bona fide dealer
36 development program that satisfies all of the following
37 requirements:

38 (i) The sole purpose of the program is to make franchises
39 available to persons lacking capital, training, business experience,
40 or other qualities ordinarily required of prospective franchisees

1 and the dealer development candidate is an individual who is
2 unable to acquire the franchise without assistance of the program.

3 (ii) The dealer development candidate has made a significant
4 investment subject to loss in the franchised business of the dealer.

5 (iii) The program requires the dealer development candidate to
6 manage the day-to-day operations and business affairs of the dealer
7 and to acquire, within a reasonable time and on reasonable terms
8 and conditions, beneficial ownership and control of a majority
9 interest in the dealer and disassociation of any direct or indirect
10 ownership or control by the manufacturer, branch, or distributor.

11 (C) Owning a wholly owned subsidiary corporation of a
12 distributor that sells motor vehicles at retail, if, for at least three
13 years prior to January 1, 1973, the subsidiary corporation has been
14 a wholly owned subsidiary of the distributor and engaged in the
15 sale of vehicles at retail.

16 (3) (A) A manufacturer, branch, and distributor that owns or
17 operates a dealership in the manner described in subparagraph (A)
18 of paragraph (2) shall give written notice to the board, within 10
19 days, each time it commences or terminates operation of a
20 dealership and each time it acquires, changes, or divests itself of
21 an ownership interest.

22 (B) A manufacturer, branch, and distributor that owns an interest
23 in a dealer in the manner described in subparagraph (B) of
24 paragraph (2) shall give written notice to the board, annually, of
25 the name and location of each dealer in which it has an ownership
26 interest, the name of the bona fide dealer development owner or
27 owners, and the ownership interests of each owner expressed as a
28 percentage.

29 (p) To unfairly discriminate among its franchisees with respect
30 to warranty reimbursement or authority granted to its franchisees
31 to make warranty adjustments with retail customers.

32 (q) To sell vehicles to a person not licensed pursuant to this
33 chapter for resale.

34 (r) To fail to affix an identification number to a park trailer, as
35 described in Section 18009.3 of the Health and Safety Code, that
36 is manufactured on or after January 1, 1987, and that does not
37 clearly identify the unit as a park trailer to the department. The
38 configuration of the identification number shall be approved by
39 the department.

1 (s) To dishonor a warranty, rebate, or other incentive offered
2 to the public or a dealer in connection with the retail sale of a new
3 motor vehicle, based solely upon the fact that an autobroker
4 arranged or negotiated the sale. This subdivision shall not prohibit
5 the disallowance of that rebate or incentive if the purchaser or
6 dealer is ineligible to receive the rebate or incentive pursuant to
7 any other term or condition of a rebate or incentive program.

8 (t) To exercise a right of first refusal or other right requiring a
9 franchisee or an owner of the franchise to sell, transfer, or assign
10 to the franchisor, or to a nominee of the franchisor, all or a material
11 part of the franchised business or of the assets of the franchised
12 business unless all of the following requirements are met:

13 (1) The franchise authorizes the franchisor to exercise a right
14 of first refusal to acquire the franchised business or assets of the
15 franchised business in the event of a proposed sale, transfer, or
16 assignment.

17 (2) The franchisor gives written notice of its exercise of the
18 right of first refusal no later than 45 days after the franchisor
19 receives all of the information required pursuant to subparagraph
20 (A) of paragraph (2) of subdivision (d).

21 (3) The sale, transfer, or assignment being proposed relates to
22 not less than all or substantially all of the assets of the franchised
23 business or to a controlling interest in the franchised business.

24 (4) The proposed transferee is neither a family member of an
25 owner of the franchised business, nor a managerial employee of
26 the franchisee owning 15 percent or more of the franchised
27 business, nor a corporation, partnership, or other legal entity owned
28 by the existing owners of the franchised business. For purposes of
29 this paragraph, a “family member” means the spouse of an owner
30 of the franchised business, the child, grandchild, brother, sister,
31 or parent of an owner, or a spouse of one of those family members.
32 This paragraph does not limit the rights of the franchisor to
33 disapprove a proposed transferee as provided in subdivision (d).

34 (5) Upon the franchisor’s exercise of the right of first refusal,
35 the consideration paid by the franchisor to the franchisee and
36 owners of the franchised business shall equal or exceed all
37 consideration that each of them were to have received under the
38 terms of, or in connection with, the proposed sale, assignment, or
39 transfer, and the franchisor shall comply with all the terms and

1 conditions of the agreement or agreements to sell, transfer, or
2 assign the franchised business.

3 (6) The franchisor shall reimburse the proposed transferee for
4 expenses paid or incurred by the proposed transferee in evaluating,
5 investigating, and negotiating the proposed transfer to the extent
6 those expenses do not exceed the usual, customary, and reasonable
7 fees charged for similar work done in the area in which the
8 franchised business is located. These expenses include, but are not
9 limited to, legal and accounting expenses, and expenses incurred
10 for title reports and environmental or other investigations of real
11 property on which the franchisee's operations are conducted. The
12 proposed transferee shall provide the franchisor a written
13 itemization of those expenses, and a copy of all nonprivileged
14 reports and studies for which expenses were incurred, if any, within
15 30 days of the proposed transferee's receipt of a written request
16 from the franchisor for that accounting. The franchisor shall make
17 payment within 30 days of exercising the right of first refusal.

18 (u) (1) To unfairly discriminate in favor of a dealership owned
19 or controlled, in whole or in part, by a manufacturer or distributor
20 or an entity that controls or is controlled by the manufacturer or
21 distributor. Unfair discrimination includes, but is not limited to,
22 the following:

23 (A) The furnishing to a franchisee or dealer that is owned or
24 controlled, in whole or in part, by a manufacturer, branch, or
25 distributor of any of the following:

26 (i) A vehicle that is not made available to each franchisee
27 pursuant to a reasonable allocation formula that is applied
28 uniformly, and a part or accessory that is not made available to all
29 franchisees on an equal basis when there is no reasonable allocation
30 formula that is applied uniformly.

31 (ii) A vehicle, part, or accessory that is not made available to
32 each franchisee on comparable delivery terms, including the time
33 of delivery after the placement of an order. Differences in delivery
34 terms due to geographic distances or other factors beyond the
35 control of the manufacturer, branch, or distributor shall not
36 constitute unfair competition.

37 (iii) Information obtained from a franchisee by the manufacturer,
38 branch, or distributor concerning the business affairs or operations
39 of a franchisee in which the manufacturer, branch, or distributor
40 does not have an ownership interest. The information includes,

1 but is not limited to, information contained in financial statements
2 and operating reports, the name, address, or other personal
3 information or buying, leasing, or service behavior of a dealer
4 customer, and other information that, if provided to a franchisee
5 or dealer owned or controlled by a manufacturer or distributor,
6 would give that franchisee or dealer a competitive advantage. This
7 clause does not apply if the information is provided pursuant to a
8 subpoena or court order, or to aggregated information made
9 available to all franchisees.

10 (iv) Sales or service incentives, discounts, or promotional
11 programs that are not made available to all California franchises
12 of the same line-make on an equal basis.

13 (B) Referring a prospective purchaser or lessee to a dealer in
14 which a manufacturer, branch, or distributor has an ownership
15 interest, unless the prospective purchaser or lessee resides in the
16 area of responsibility assigned to that dealer or the prospective
17 purchaser or lessee requests to be referred to that dealer.

18 (2) This subdivision does not prohibit a franchisor from granting
19 a franchise to prospective franchisees or assisting those franchisees
20 during the course of the franchise relationship as part of a program
21 or programs to make franchises available to persons lacking capital,
22 training, business experience, or other qualifications ordinarily
23 required of prospective franchisees.

24 (v) (1) To access, modify, or extract information from a
25 confidential dealer computer record, as defined in Section
26 11713.25, without obtaining the prior written consent of the dealer
27 and without maintaining administrative, technical, and physical
28 safeguards to protect the security, confidentiality, and integrity of
29 the information.

30 (2) Paragraph (1) does not limit a duty that a dealer may have
31 to safeguard the security and privacy of records maintained by the
32 dealer.

33 (w) (1) To use electronic, contractual, or other means to prevent
34 or interfere with any of the following:

35 (A) The lawful efforts of a dealer to comply with federal and
36 state data security and privacy laws.

37 (B) The ability of a dealer to do either of the following:

38 (i) Ensure that specific data accessed from the dealer's computer
39 system is within the scope of consent specified in subdivision (v).

1 (ii) Monitor specific data accessed from or written to the dealer's
2 computer system.

3 (2) Paragraph (1) does not limit a duty that a dealer may have
4 to safeguard the security and privacy of records maintained by the
5 dealer.

6 (x) (1) To unfairly discriminate against a franchisee selling a
7 service contract, debt cancellation agreement, maintenance
8 agreement, or similar product not approved, endorsed, sponsored,
9 or offered by the manufacturer, manufacturer branch, distributor,
10 or distributor branch or affiliate. For purposes of this subdivision,
11 unfair discrimination includes, but is not limited to, any of the
12 following:

13 (A) Express or implied statements that the dealer is under an
14 obligation to exclusively sell or offer to sell service contracts, debt
15 cancellation agreements, or similar products approved, endorsed,
16 sponsored, or offered by the manufacturer, manufacturer branch,
17 distributor, or distributor branch or affiliate.

18 (B) Express or implied statements that selling or offering to sell
19 service contracts, debt cancellation agreements, maintenance
20 agreements, or similar products not approved, endorsed, sponsored,
21 or offered by the manufacturer, manufacturer branch, distributor,
22 or distributor branch or affiliate, or the failure to sell or offer to
23 sell service contracts, debt cancellation agreements, maintenance
24 agreements, or similar products approved, endorsed, sponsored,
25 or offered by the manufacturer, manufacturer branch, distributor,
26 or distributor branch or affiliate will have any negative
27 consequences for the dealer.

28 (C) Measuring a dealer's performance under a franchise
29 agreement based upon the sale of service contracts, debt
30 cancellation agreements, or similar products approved, endorsed,
31 sponsored, or offered by the manufacturer, manufacturer branch,
32 distributor, or distributor branch or affiliate.

33 (D) Requiring a dealer to actively promote the sale of service
34 contracts, debt cancellation agreements, or similar products
35 approved, endorsed, sponsored, or offered by the manufacturer,
36 manufacturer branch, distributor, or distributor branch or affiliate.

37 (E) Conditioning access to vehicles or parts, or vehicle sales or
38 service incentives upon the sale of service contracts, debt
39 cancellation agreements, or similar products approved, endorsed,

1 sponsored, or offered by the manufacturer, manufacturer branch,
2 distributor, or distributor branch or affiliate.

3 (2) Unfair discrimination does not include, and nothing shall
4 prohibit a manufacturer from, offering an incentive program to
5 vehicle dealers who voluntarily sell or offer to sell service
6 contracts, debt cancellation agreements, or similar products
7 approved, endorsed, sponsored, or offered by the manufacturer,
8 manufacturer branch, distributor, or distributor branch or affiliate,
9 if the program does not provide vehicle sales or service incentives.

10 (3) This subdivision does not prohibit a manufacturer,
11 manufacturer branch, distributor, or distributor branch from
12 requiring a franchisee that sells a used vehicle as “certified” under
13 a certified used vehicle program established by the manufacturer,
14 manufacturer branch, distributor, or distributor branch to provide
15 a service contract approved, endorsed, sponsored, or offered by
16 the manufacturer, manufacturer branch, distributor, or distributor
17 branch.

18 (4) Unfair discrimination does not include, and nothing shall
19 prohibit a franchisor from requiring a franchisee to provide, the
20 following notice prior to the sale of the service contract if the
21 service contract is not provided or backed by the franchisor and
22 the vehicle is of the franchised line-make:

23
24 “Service Contract Disclosure

25 The service contract you are purchasing is not provided or backed
26 by the manufacturer of the vehicle you are purchasing. The
27 manufacturer of the vehicle is not responsible for claims or repairs
28 under this service contract.

29
30 _____
31 Signature of Purchaser”

32 (y) (1) To take or threaten to take any adverse action against a
33 dealer pursuant to an export or sale-for-resale prohibition because
34 the dealer sold or leased a vehicle to a customer who either
35 exported the vehicle to a foreign country or resold the vehicle in
36 violation of the prohibition, if the dealer causes the vehicle to be
37 registered in this or any other state, and collects or causes to be
38 collected any applicable sales or use tax due to this state.

39 (2) Notwithstanding paragraph (1), the manufacturer,
40 manufacturer branch, distributor, or distributor branch may take

1 an adverse action against a dealer only when a vehicle is either
2 exported to a foreign country or resold in violation of an export or
3 sale-for-resale prohibition policy if the manufacturer, manufacturer
4 branch, distributor, or distributor branch provided the policy and
5 a known exporter list in writing to the dealer at least 48 hours
6 before the sale or lease of the vehicle and the dealer sold or leased
7 the vehicle to a person listed as a known-exporter. *exporter or the*
8 *dealer had actual knowledge of the customer's intent to export the*
9 *vehicle to a foreign country at the time of the sale or lease. In any*
10 *proceeding in which a challenge to an adverse action is at issue,*
11 *the manufacturer, manufacturer branch, distributor, or distributor*
12 *branch shall have the burden of proof to show that the vehicle was*
13 *either exported or resold in violation of an export or sale-for-resale*
14 *prohibition policy and that the customer's name appeared on the*
15 *list of known exporters provided to the dealer at least 48 hours*
16 *prior to the sale or lease, or the dealer had actual knowledge of*
17 *the customer's intent to export the vehicle to a foreign country at*
18 *the time of the sale or lease.*

19 (z) As used in this section, "area of responsibility" means a
20 geographic area specified in a franchise that is used by the
21 franchisor for the purpose of evaluating the franchisee's
22 performance of its sales and service obligations.

23 SEC. 3. No reimbursement is required by this act pursuant to
24 Section 6 of Article XIII B of the California Constitution because
25 the only costs that may be incurred by a local agency or school
26 district will be incurred because this act creates a new crime or
27 infraction, eliminates a crime or infraction, or changes the penalty
28 for a crime or infraction, within the meaning of Section 17556 of
29 the Government Code, or changes the definition of a crime within
30 the meaning of Section 6 of Article XIII B of the California
31 Constitution.